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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 * * *

9 HANK ZABALA,

10 Plaintiff,

11 v.

12 SHERIFF MIKE HALEY; DEPUTY
13 BALAAM; DEPUTY YOUNGBLOOD;
14 DEPUTY JENKINS; DEPUTY
CHRISTENSEN,

15 Defendants.

Case No. 2:13-cv-00393-RFB-PAL

ORDER

16 **I. INTRODUCTION**

17 This case is before the Court on the following motions:

- 18 1. Plaintiff's Motion for Leave to File an Amended Complaint. ECF No. 41
19 2. Defendants' Motion to Strike re Response (ECF No. 34). ECF No. 35
20 3. Defendants' Motion to Strike re Response to Motion, Reply to Response to Motion,
21 Response to Motion, Response to Motion by Defendants (ECF Nos. 36, 42, 38, 44).
22 ECF No. 45
23 4. Defendants' Motion for Summary Judgment. ECF No. 28
24

25 For the reasons stated below, the Court denies Plaintiff's Motion for Leave to File an
26 Amended Complaint, denies Defendants' Motions to Strike (ECF Nos. 35 and 45), and grants
27 Defendants' Motion for Summary Judgment.
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1 **II. BACKGROUND**

2 The following facts are alleged in Plaintiff's Amended Complaint. ECF No. 5. Plaintiff
3 Hank Zabala is incarcerated at High Desert State Prison. He alleges that he was placed in
4 disciplinary segregation at the Washoe County Detention Facility from August 9, 2011 through
5 July 2012 as an act of racial bias and discrimination because he is a Mexican American, and also
6 in retaliation for his efforts to file grievances. He raises claims for:

- 7 1) violations under the First Amendment, for being placed in administrative segregation
8 in retaliation against his filing grievances;
9 2) violations under the Equal Protection Clause of the Fourteenth Amendment for being
10 placed in administrative segregation as an act of racial bias and discrimination because
11 he is Mexican American; and
12 3) violations of procedural due process for being placed in administrative segregation as
13 a pre-trial detainee.

14 Plaintiff seeks compensatory and punitive damages along with declaratory relief.

15 The only remaining claims are those against Defendants Sheriff Haley and Deputies
16 Balaam and Jenkins, in their individual capacities.

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18 **III. PROCEDURAL HISTORY**

19 Plaintiff Zabala filed a Motion for Leave to Proceed in forma pauperis on March 7, 2013.
20 ECF No. 1. On November 12, 2013, the Court granted Plaintiff's Motion. ECF No. 2. Plaintiff
21 filed his Complaint on November 12, 2013. ECF No. 4. Plaintiff filed his Amended Complaint
22 with Jury Demand on November 21, 2013. ECF No. 5. The Court ordered on April 22, 2014 that
23 all claims against all Defendants in their official capacity are dismissed without prejudice for
24 failure to state a claim upon which relief may be granted, with Plaintiff's claims against the
25 Defendants in their individual capacity remaining before the Court. ECF No. 6.

26 On December 29, 2014, Defendants filed a Motion for Summary Judgment. ECF No. 28.
27 On February 5, 2015, Plaintiff filed an "Opposition." ECF No. 34. On February 10, 2015,
28 Defendants filed a Motion to Strike [34] Response. ECF No. 35.

1 On March 16, 2015, Plaintiff filed a Motion for Leave to File an Amended Complaint re
2 First Amended Complaint (ECF No. 5). ECF No. 41.

3 On March 18, 2014, Defendants filed a Motion to Strike Response to Motion (ECF No.
4 36), Reply to Response to Motion (ECF No. 42), Response to Motion (ECF No. 38), Response to
5 Motion (ECF No. 44). ECF No. 45.

6
7 **IV. MOTION TO AMEND (ECF No. 41)**

8 Plaintiff originally named Deputies Christensen and Youngblood in his Amended
9 Complaint. ECF No. 5.

10 On April 22, 2014, the Court ordered that “[w]ithin twenty (20) days after receiving from
11 the Marshal a copy of the USM-285 form showing whether service has been accomplished,
12 Plaintiff must file a notice with the Court identifying which Defendants were served and which
13 were not served, if any. If Plaintiff wishes to have service again attempted on an unserved
14 Defendant(s), then a motion must be filed with the Court identifying the unserved Defendant(s)
15 and specifying a more detailed name and/or address for said Defendant(s), or whether some other
16 manner of service should be attempted. Pursuant to Rule 4(m) of the Federal Rules of Civil
17 Procedure, Plaintiff must complete service within 120 days from entry of this order.” ECF No. 6.

18 On May 28, 2014, Summons was returned unexecuted as to these two defendants. ECF No.
19 11. The reasons stated were that there were “multiple deputy Christensens” and that Deputy
20 Youngblood was no longer employed by Washoe County Sheriff’s Office. ECF No. 11.

21 On March 16, 2015, Plaintiff filed a motion to amend his Amended Complaint to change
22 the name of Christensen and Youngblood to include their first initials and badge numbers. ECF
23 No. 41. Defendants oppose Plaintiff’s motion, arguing that Christensen and Youngblood are not
24 defendants to this action because they were not served, and further, Plaintiff’s motion is untimely.

25 Because Plaintiff never served Defendants Deputies Christensen and Youngblood, and
26 because of the delay in the filing of the motion, the Court DENIES Plaintiff’s motion to amend to
27 include the two unserved defendants.

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1 **V. MOTIONS TO STRIKE. ECF (Nos. 35 and 45)**

2 On December 29, 2014, Defendants filed a Motion for Summary Judgment. ECF No. 28.
3 On January 20, 2015, the Court granted Plaintiff's Motion to Extend Time and set the deadline for
4 filing a Response to Summary Judgment to February 23, 2015. ECF No. 32. Plaintiff filed an
5 unsigned "Opposition" (Plaintiff's First Response) on February 5, 2015. ECF No. 34. Defendants
6 moved to strike the Opposition on February 10, 2015. ECF No. 35.

7 Plaintiff subsequently filed a Motion on February 19, 2015, which the Court construes as
8 a request to amend his previous Response to comply with the Federal Rules, specifically with
9 regards to FRCP 11. ECF No. 36.

10 On February 27, 2015, the Plaintiff filed another Response (Plaintiff's Second Response)
11 to the Defendants' Motion for Summary Judgment. ECF No. 38. The Plaintiff then filed two
12 additional Responses on March 16, 2015 (Plaintiff's Third and Fourth Responses). ECF Nos. 42
13 and 44.

14 Federal Rule of Civil Procedure 11(a) requires that "[e]very pleading, written motion, and
15 other paper must be signed by at least one attorney of record in the attorney's name—or by a party
16 personally if the party is unrepresented... The court must strike an unsigned paper unless the
17 omission is promptly corrected after being called to the attorney's or party's attention." The Court
18 has reviewed the Plaintiff's First Response (ECF No. 34) and finds that it was unsigned. The Court
19 will not strike the unsigned paper, however, because Plaintiff's Motion on February 19, 2015 (ECF
20 No. 36) seeks to address the omission once it was brought to his attention by Defendants (ECF No.
21 35). Therefore, the Court will consider the exhibits attached to Plaintiff's First Response in its
22 decision on summary judgment, but will disregard the unsigned Response itself.

23 Because of the Court's desire to resolve Motions for Summary Judgment on the merits, the
24 Court will consider Plaintiff's subsequent Responses (ECF Nos. 34, 36, 42, 44) and DENIES
25 Defendants' Motions to strike (ECF Nos. 35 and 45). Taking into consideration the briefs and
26 exhibits included in the aforementioned responses, the Court makes the following findings as
27 regards summary judgment.

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1 **VI. MOTION FOR SUMMARY JUDGMENT. ECF No. 28**

2 **A. Undisputed Facts**

3 The parties do not dispute the following factual allegations (See Am. Compl., ECF No. 5
4 and Mot. Summ. J., ECF No. 28):

5 Mr. Zabala is currently a resident of the High Desert State Prison in Nevada. During the
6 relevant time period from August 2011-July 2012, Mr. Zabala was housed at the Washoe County
7 Regional Detention Facility (“the Facility”). □Mr. Zabala is Mexican American. □

8 Prior to August 9, 2011, Plaintiff was placed in Administrative Segregation on several
9 occasions while at the Facility. Classification reports submitted by both Plaintiff and Defendants
10 indicate that Mr. Zabala was placed in Administrative Segregation either as a result of Plaintiff’s
11 behavior within the Facility, or upon Plaintiff’s request to be placed or remain there. For example,
12 on March 17, 2011, Plaintiff indicated that he wanted to remain in Administrative Segregation.
13 Opp’n, ECF No. 34 at 40. On July 24, 2011, Plaintiff was placed in Administrative Segregation
14 for failure to comply with instructions given during a shakedown. Id. at 31. On several occasions,
15 Plaintiff’s request to be moved to General Population was approved by prison officials. See Id. at
16 34. On one occasion, this request was denied due to room restrictions. Id. at 38.

17 At some time prior to August 9, 2011, Mr. Zabala filed a grievance alleging the use of
18 excessive force by a Washoe County Sheriff’s Deputy. At some time prior to August 9, 2011, Mr.
19 Zabala filed grievances about his treatment as an inmate at the Washoe County Regional Detention
20 Facility.

21 On or about August 9, 2011, Mr. Zabala was placed into Administrative Segregation. In
22 the summer of 2011, tensions in Housing Unit 8, where Mr. Zabala was housed, resulted in a fight
23 between various inmates housed in that portion of the Facility on July 31, 2011. As a result of this
24 altercation, an investigation was conducted by prison staff to determine the underlying facts which
25 caused the fight. The investigation concluded that Mr. Zabala was the “shot caller” for the Surenos
26 gang members in the housing unit. The investigation indicated that Plaintiff’s affiliation with the
27 Surenos gang was corroborated by the tattoo art on his body known to represent such association.
28 Consequently, Plaintiff was one among several inmates sent to Administrative Segregation for the

1 safety and security of the facility due to his involvement in gang politics within the Facility. See
 2 Opp’n, ECF No. 34 at 16-24; Mot. Summ. J., Ex. A, ECF No. 28 at 30.

3 Between August 9, 2011 and July 2012, Plaintiff’s classification in Administrative
 4 Segregation was reviewed on a monthly basis. This review included interviews with Mr. Zabala.
 5 See Opp’n, ECF No. 34 at 87-95; Mot. Summ. J., Ex. G, ECF No. 28. at 244-45. Classification
 6 Case Memoranda state that Plaintiff was not eligible to move to General Population due to safety
 7 and security concerns as a result of continued gang affiliation and his history and pattern of
 8 behavior within the facility. Id. On one occasion, on March 29, 2012, Deputy Youngblood, tasked
 9 to interview Zabala, reported that Plaintiff “stated he did not need a review.” Mot. Summ. J., Ex.
 10 G, ECF No. 28. at 252; Opp’n, ECF No. 34 at 93.

11 On December 5, 2011, a search of Mr. Zabala’s cell disclosed handmade weapons,
 12 specifically, two pencils that had been altered to expose elongated lead at the ends, and a “billy
 13 club” made out of a rolled up magazine and packing tape. Mot. Summ. J., Ex. C., ECF No. 28 at
 14 220-21. Plaintiff was convicted of Possession or Control of a Dangerous Weapon or Facsimile
 15 thereof by an Incarcerated Person. Id., Ex. D. at 226-27. □

16 **B. Legal Standard**

17 Summary judgment is appropriate when the pleadings, depositions, answers to
 18 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no
 19 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
 20 Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering
 21 the propriety of summary judgment, the court views all facts and draws all inferences in the light
 22 most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789, 793 (9th Cir.
 23 2014). If the movant has carried its burden, the non-moving party “must do more than simply show
 24 that there is some metaphysical doubt as to the material facts Where the record taken as a
 25 whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine
 26 issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation
 27 marks omitted).

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C. Claims Against Sheriff Haley

Liability under Section 1983 arises only upon a showing of personal participation by the defendant. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor is only liable for constitutional violations of his subordinates if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them. There is no respondeat superior liability under section 1983. Id.

Plaintiff does not allege that Sheriff Haley personally participated in any of the particular causes of action he raises. Further, Plaintiff has not provided evidence to support the allegation that Sheriff Haley personally participated in any of the constitutional violations Plaintiff alleges. Specifically, Plaintiff has not demonstrated that Sheriff Haley is a part of the classification process. See Mot. Summ. J., Ex. A, ECF No. 28 at 37. A review of the classification case memoranda reveals that Deputies, rather than the Sheriff, determine inmate classification. These memoranda appear to be signed, at times, by a Sergeant. The memoranda do not appear to be signed and approved by Sheriff Haley.

The only allegations Plaintiff makes in his Opposition to the summary judgment motion regarding Sheriff Haley's participation were that Haley was the Sheriff in charge of the Facility in which Plaintiff was housed and should have prevented deputies from violating Mr. Zabala's constitutional rights. Opp'n, ECF No. 34 at 3. However, there is no allegation that Sheriff Haley actually knew of any of the alleged actions, nor has Plaintiff provided evidence showing that Sheriff Haley knew of unconstitutional actions by deputies under his control and failed to prevent them. Indeed, Plaintiff admitted at the hearing that he had no evidence that Haley specifically participated in any decision or approval of a decision related to his classification or placement. Therefore, the Court GRANTS Defendants' motion for summary judgment regarding claims against Sheriff Haley.

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D. First Amendment Retaliation Claim

Mr. Zabala alleges in his Amended Complaint that he was placed in Administrative Segregation from August 2011 until July 2012 as a retaliatory measure against his filing grievances against the deputies at Washoe County in violation of his constitutional right to free speech under the First Amendment. Am. Compl. at 6.

The Ninth Circuit has held that prisoners have a right under the First Amendment to file grievances against prison officials and to be free from retaliation for doing so. Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir.2009).

To establish a First Amendment retaliation claim within the prison context, a plaintiff must establish five elements: “(1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2004).

Defendants concede that Plaintiff’s allegation that he was placed in Administrative Segregation because he asserted an excessive force claim against Deputy Evans satisfies the requirement that adverse action was taken against Plaintiff. Mot. Summ. J., ECF No. 28 at 14. Plaintiff has also demonstrated that Deputy Balaam was involved in the process of initially classifying Plaintiff in August 2011. Opp’n, ECF No. 34 at 16-24. Specifically, it appears that Deputy Balaam was involved in interviewing various inmates in order to investigate the July 31, 2011 fight that led to Zabala’s classification into Administrative Segregation. Id. Plaintiff has not demonstrated involvement on the part of Deputy Jenkins. Moreover, the evidence does not suggest that Deputy Balaam was responsible for classifying Plaintiff into Administrative Segregation. Rather, the record indicates that Deputy Leonard was responsible for the initial placement in August 2011. From that initial placement until July 2012, there is no evidence before the Court to indicate that either Deputies Balaam or Jenkins were involved in the classification process after the initial classification.

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1 Further, this Court considers the relevant time period for Plaintiff's claims to be August
2 2011 to December 2011, given that Mr. Zabala was convicted for possession of a dangerous
3 weapon in December 2011 and reclassified as being in Disciplinary rather than Administrative
4 Segregation.

5 The Plaintiff cannot demonstrate that Deputy Balaam, even with his involvement in the
6 interview process that placed Plaintiff in Administrative Segregation initially, took such adverse
7 action because of the grievance Plaintiff filed against the Deputy Evans for excessive use of force.
8 There is no indication that Balaam knew of the filing of the grievance or would have some reason
9 to retaliate for a grievance filed against Evans and not Balaam.

10 Additionally, the Court notes that neither party has produced a copy of the grievance
11 regarding the incident in question, nor has the Plaintiff indicated when he submitted this grievance.
12 However, the Court has reviewed the reports filed by Deputies Evans, Cheung, and Sarratea, and
13 notes the time lapse, approximately four months, between the excessive force incident on March
14 6, 2011, and Plaintiff's contested placement in Administrative Segregation from August 2011 until
15 July 2012. Opp'n, ECF No. 34 at 76-84. Even assuming that Plaintiff did not file his grievance
16 until a later time closer to his yearlong assignment to Administrative Segregation, in the time
17 between March 6, 2011 and August 2011, it appears that Plaintiff was placed in Administrative
18 Segregation on several occasions, including on July 22, 2011 when Mr. Zabala failed to follow
19 certain instructions during shakedown. Id. at 31. Therefore, Plaintiff cannot demonstrate that the
20 filing of specific grievance regarding excessive use of force was the cause of his eventual
21 placement in Administrative Segregation from August until December 2011.

22 The Plaintiff's retaliation claim does demonstrate that such action may have chilled his
23 exercise of his First Amendment rights. The Defendants concede that "[b]etween August 9, 2011
24 and July 2012, Mr. Zabala asked for grievance forms, and was discouraged from filing grievances
25 by unidentified deputies that grievances 'are for snitches and are red flags for cell searches.'" Mot.
26 Summ. J., ECF No. 28 at 3. Therefore, a material issue of fact exists as to the fourth element of
27 Plaintiff's First Amendment retaliation claim.

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1 Nonetheless, the Court finds that placing Plaintiff Zabala in Administrative Segregation in
 2 August 2011 did reasonably advance a legitimate penological goal: the safety and security of the
 3 facility. The Court finds that the events leading up to Plaintiff's initial classification in August
 4 2011 regarding his affiliation with the Surenos gang justifies placement in Administrative
 5 Segregation. Specifically, as a result of an altercation that took place on July 31, 2011, the
 6 following Classification case memorandum was written. "As regards Plaintiff, Washoe County
 7 Sheriff's Office found the following: Inmate Zabala who acted as the 'Shot Caller' in [Unit] Eight
 8 [] ordered L. Sanchez and Padilla to leave the unit ... Zabala told Inmate J. Devencenzi to force
 9 Inmate L. Sanchez out." Opp'n, ECF No. 34 at 22-23. This led to a fight between Devencenzi and
 10 Sanchez. As a result, "Zabala was sent to Housing Unit Four for the safety and security of the
 11 facility. This is due to his involvement in gang politics within the facility. His tentative review date
 12 is 8/31/11." Id. at 23. The memorandum indicates that Zabala was placed into Housing Unit Four
 13 on August 2, 2011. Id. at 16.

14 In conclusion, the Court finds that Plaintiff has failed to sufficiently demonstrate for this
 15 motion for summary judgment that a.) he was placed in Administrative segregation because of the
 16 filing of a grievance, b.) Deputies Jenkins and Balaam contributed intentionally in his placement
 17 in Administrative Segregation for an improper motive, or c.) the facility lacked a penological basis
 18 for placing him in Administrative Segregation.

19 **E. Equal Protection Claim**

20 The Ninth Circuit has held that "[t]o state a claim under 42 U.S.C. § 1983 for a violation
 21 of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the
 22 defendants acted with an intent or purpose to discriminate against the plaintiff based upon
 23 membership in a protected class." Furnace v. Sullivan, 705 F.3d 1021, 1030 (9th Cir. 2013). In
 24 order "[t]o avoid summary judgment, [Zabala] must produce evidence sufficient to permit a
 25 reasonable trier of fact to find by a preponderance of the evidence" that the actions taken were
 26 racially motivated. Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003).

27 Plaintiff has not alleged any evidence to suggest that his placement or treatment in
 28 Administrative Segregation was a result of racially motivated bias. While the parties do not dispute

1 that Plaintiff is Mexican American, Zabala has not provided evidence to the Court showing that
2 his placement in Administrative Segregation was in any way related to his race. Rather, Plaintiff
3 was placed in Administrative Segregation as a result of an investigation identifying him as the
4 “Shot Caller” of the Surenos gang. There are no outstanding issues of material fact regarding this
5 claim. The Court therefore grants Defendants’ Motion for Summary Judgment as to Plaintiff’s
6 First Equal Protection claims.

7 **F. Due Process Claim**

8 The Court construes Plaintiff’s due process claim to relate to: 1) his initial classification in
9 August 2011; and 2) his continued or recurring classification from August 2011 through July 2012,
10 which the Court has narrowed to the period of August to December 2011 due to Plaintiff’s
11 conviction in December for possession of a weapon.

12 **1. Initial Classification.**

13 Plaintiff alleges that his due process rights were violated by his initial classification into
14 Administrative Segregation in August 2011. Am. Compl., ECF No. 5 at 3. Specifically, he alleges
15 that he was denied a fair hearing when placed into Administrative Segregation. Plaintiff alleges
16 that he was denied an opportunity to defend himself against allegations that he was a “shot caller”
17 for the Surenos gang after being placed in Administrative Segregation. Opp’n at 10.

18 Applying the Matthews v. Eldridge test for procedural due process to the prison context,
19 the Supreme Court has held that when a person is placed into administrative segregation, the prison
20 is obligated to engage in an informal, nonadversary review of the information supporting
21 respondent’s administrative confinement, including whatever statement respondent wished to
22 submit, within a reasonable time after confining him to administrative segregation. Hewitt v.
23 Helms, 459 U.S. 460, 472 (1983) (emphasis added). In defining the contours of the statement the
24 respondent wished to submit, the Court stated that “[o]rdinarily a written statement by the inmate
25 will accomplish this purpose, although prison administrators may find it more useful to permit oral
26 presentations in cases where they believe a written statement would be ineffective. So long as this
27 occurs, and the decisionmaker reviews the charges and then-available evidence against the
28 prisoner, the Due Process Clause is satisfied.” Id. at 476.

1 Defendants contend that Plaintiff was initially placed into Administrative Segregation as a
2 result of a fight that erupted on July 31, 2011, leading to an investigation that identified Zabala as
3 the “shot caller” for the Sureños gang. Mot. Summary Judgment at 9-11; See Opp’n at 16. It would
4 appear that Zabala was then placed into Housing Unit 4, Administrative Segregation, on August
5 2, 2011. Id. at 16.

6 The first review of Zabala’s classification following his placement on August 2, 2011
7 occurred 30 days later on September 2, 2011. Mot. Summ. J. at 244. During this review, conducted
8 by Deputy Christensen, Zabala was told that he was not eligible to move to General Population
9 due to his gang activity in Housing Units 8 and 15. Zabala argued that this decision is based on
10 hearsay and is unfounded. He further asked Deputy Christensen to review video footage of his
11 actions to corroborate his account that he was not involved in the fight on July 31, 2011 –
12 specifically that he did not tell the other inmates to leave. Deputy Christensen informed the
13 Plaintiff that this information was brought to his attention by various inmates. “Based on the
14 totality of Zabala’s behavior, [Deputy Christensen found that] [Mr. Zabala] is not eligible to move
15 to General Population at this time” and consequently, Mr. Zabala would “remain in Housing Unit
16 4 as Administrative Segregation for facility safety and security purposes.” Id.

17 The Court therefore finds that the September 2, 2011 classification process provided Zabala
18 with a timely, informal, nonadversary review of the information supporting his administrative
19 confinement, including allowing Zabala to make oral statements in his defense. The Court also
20 finds that none of the Defendants (Haley, Balaam or Jenkins) appears to have been involved in this
21 classification process. The Court finds that Zabala was not denied due process as to his initial
22 classification in August 2011.

23 **2. Recurring Classification.**

24 Even after a prisoner has been placed in administrative segregation, however, prison
25 officials must periodically review the initial placement. In Helms, the Court notes that
26 “administrative segregation may not be used as a pretext for indefinite confinement of an inmate.
27 Prison officials must engage in some sort of periodic review of the confinement of such inmates.”
28 Hewitt, 459 U.S. at 477 n.9. The Court goes on to explain that “[t]his review will not necessarily

1 require that prison officials permit the submission of any additional evidence or statements. The
2 decision whether a prisoner remains a security risk will be based on facts relating to a particular
3 prisoner—which will have been ascertained when determining to confine the inmate to
4 administrative segregation—and on the officials' general knowledge of prison conditions and
5 tensions.” Id.

6 A review of the evidence before the Court reveals that Plaintiff was afforded a classification
7 review approximately every 30 days from August 2011 to December 2011. In these reviews, it was
8 explained to Zabala that as a result of his pattern of behavior, gang affiliation, and a separate
9 infraction in which Zabala was found to have a concealed weapon in his cell, he would remain in
10 Administrative Segregation. Mot. Summ. J. at 245-54. The Court further notes that none of the
11 defendants (Haley, Balaam or Jenkins) appears to have been involved in the classification process
12 from August 2011 to December 2011.

13 The Court therefore finds that during the period in question, Plaintiff was afforded monthly
14 review of his placement in Administrative Segregation and does not find a procedural due process
15 violation as to his recurring classification. The Court also notes that none of the Defendants
16 participated in the reclassification process.

17 The Court grants the Defendants’ Motion for Summary Judgment as to Plaintiff’s due
18 process claims.

19 **G. Qualified Immunity**

20 Because the Court grants Defendants’ Motions for Summary Judgment and do not find that
21 the officers’ conduct violated the First Amendment or Fourteenth Amendment, the Court not need
22 discuss whether Defendants Haley, Balaam, or Jenkins are entitled to qualified immunity.

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1 **VII. CONCLUSION**

2 Accordingly, **IT IS ORDERED** that Plaintiff's Motion for Leave to File an Amended
3 Complaint (ECF No. 41) is DENIED. **IT IS FURTHER ORDERED** that Defendants' Motions
4 to Strike (ECF Nos. 35 and 45) are DENIED. **IT IS FURTHER ORDERED** that Defendants'
5 Motion for Summary Judgment (ECF No. 28) is GRANTED.

6 DATED this 30th day of September, 2015.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE